

FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



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BY ELECTRONIC MAIL

March 15, 2022
Mr. Jorge Galva
Executive Director
Puerto Rico Health Insurance Administration

Re: Abarca Health, LLC; MC-21, Inc.

Dear Mr. Galva

In accordance with the contract review policy of the Financial Oversight and Management Board for Puerto Rico (“FOMB”) established pursuant to Section 204(b)(2) of PROMESA (the “Policy”), we have reviewed the proposed amendments to (i) the Pharmacy Program Administration and (ii) the Pharmacy Benefit Manager contracts between the Puerto Rico Health Insurance Administration (“ASES” for its Spanish acronym) and (i) Abarca Health, LLC and (ii) MC-21, Inc., respectively (the “Proposed Amendments”).

After reviewing the Proposed Amendments, the FOMB concludes “Approved with Observations”. Observations related to the Proposed Amendments are set forth in Appendix A attached hereto.

Our review is solely limited to compliance of the Proposed Amendments with Section 204(b)(2) of PROMESA, which seeks to ensure proposed contracts promote market competition and are not inconsistent with approved Fiscal Plans. For the avoidance of doubt, the review performed by the FOMB does not cover a legal review of the contractual documentation or the contracting process, including without limitation: (i) compliance with contracting requirements under applicable laws, rules, and regulations, both federal and local and (ii) compliance with applicable laws, rules, and regulations governing procurement activities, both federal and local. In addition, the FOMB has not engaged in any due diligence or background check with respect to the contracting parties nor whether the contracting parties comply with the requirements under the applicable contract. Any material changes to the Proposed Amendments or the original contracts must be submitted to the FOMB for review and approval **prior to execution**.

This letter is delivered as of the date hereof and we reserve the right to provide additional observations and modify this letter based on information not available when the review was

Mr. Jorge Galva
March 15, 2021
Page 2 of 2

conducted. In addition, during the course of our review, we may receive information which we may refer to the relevant authorities.

This letter is issued only to ASES and solely with respect to the Proposed Amendments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jaime A. El Koury', with a stylized flourish at the end.

Jaime A. El Koury
General Counsel

APPENDIX A

(Page A-1)

ABARCA HEALTH, LLC; MC-21 INC. – ASES

Fiscal Plan Alignment

This review covers the proposed amendments to (i) the Pharmacy Program Administration (“PPA”) and (ii) the Pharmacy Benefit Manager (“PBM”) contracts between the Puerto Rico Health Insurance Administration (“ASES” for its Spanish acronym) and (i) Abarca Health, LLC and (ii) MC-21, Inc., respectively (the “Proposed Amendments”).

The original contracts for these services both date from 2014 and contemplate services associated with the administration of pharmacy benefit of the Government Health Plan (the “GHP”) which provides essential health services for eligible medically indigent beneficiaries. Accordingly, ASES and Abarca originally signed Contract Number 2014-000035 for Abarca to act as the Pharmacy Program Administrator of ASES’s GHP rebate program for the period of July 1, 2013 to June 30, 2014. On the other hand, ASES and MC-21 signed Contract Number 2014-000044 for pharmacy benefit management services under the GHP for the same period. Both contracts have been extended multiple times, with the previous amendments, which extended the terms of the contracts from **April 1, 2021 to March 31, 2022**, being approved with conditions on **March 31, 2021**.¹

The Proposed Amendments, on the other hand, extend the terms of both contracts under the same terms and conditions, from April 1, 2022 until December 31, 2022, unless previously terminated at ASES’s sole discretion with 3 months’ notice.

Each of the Proposed Amendments has a Maximum Payable Amount of **\$11,250,000** throughout their respective terms. However, the PPA Proposed Amendment with Abarca has a cost of **\$3,750,000.00** for **Fiscal Year 2022**, payable exclusively with Special Revenue Funds originating from the Net Rebates ASES receives from the PPA. The aggregate **\$11,250,000** cost for this contract shall also be payable from Net Rebates.

The PBM Proposed Amendment with MC-21, on the other hand, has a cost of **\$3,750,000.00** for **Fiscal Year 2022**, payable in the following manner:

- General Funds \$680,000.00
- Special Revenue Funds \$195,000.00
- Federal Funds \$2,875,000.00

However, the **aggregate \$11,250,000** cost for the PBM contract for the period extending until December 31, 2022 shall be payable in the following manner:

- General Funds \$2,039,806.00
- Special Revenue Funds \$584,801.00
- Federal Funds \$8,625,393.00

¹ These conditions were mainly centered around ASES’ completion of its RFP for PBM and PPA services. Specifically, the FOMB requested updates to ASES’ procurement plan, detailing its key dates and milestones, while requesting that the RFP process be completed by December 31, 2021. ASES effectively complied with these requests and concluded its RFP process in early December 2021.

APPENDIX A

(Page A-2)

ASES has certified that the funds required for payments under the Proposed Amendments are allocated in the corresponding accounts. As such, the FOMB's review indicates that ASES has sufficient budgeted funds in Fiscal Year 2022 to cover the cost of the Proposed Amendments' as of the date of this letter. However, this determination does not consider the extent to which total available funds will be subsequently encumbered by ASES throughout the Proposed Amendments' term. Consequently, we rely on ASES' budget certification for the purposes of this review. In the event that the Proposed Amendments cause ASES to exceed its budget, it must find savings in other areas to cover any overbudgeted amounts and request a reapportionment of any identified funds to the FOMB, in order to ensure compliance with the Certified Budget for Fiscal Year 2022.

Insofar as the Proposed Amendments will be partially funded with future Certified Budgets, ASES must ensure that such budgets incorporate all costs related to the Proposed Amendments.

ASES is expected to inform the FOMB of any budgetary differences other than those specified in Appendix A (Contract Submissions Questionnaire) and to request a re-review of the Proposed Amendments should any changes occur.

This contract review was conducted on the basis of information submitted by ASES. The FOMB has not independently verified the information included in the submission. Should the FOMB become aware of any inaccuracies or misrepresentations – whether intentional or not – it would re-evaluate its assessment.